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Attorney for defendant David Reid

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

CR-05-1849 JH

vs.

DAVID REID,

Defendant.

MOTION TO SEVER DEFENDANTS

The Defendant Reid hereby moves this Court for an order granting him a severance of his trial from that of one or more of the co-defendants on the grounds and for the reasons set out herein.

The present posture of the case is that four defendants remain set for trial. They are David Reid, George Osgood, Greg Hill and Dennis Wilson.

If any co-defendant of the defendant Reid is unwilling to testify in their

1 own trial (as a result of exercising their right not to testify), but would testify
2 in a separate trial of the defendant Reid and offer exculpatory testimony as
3 to the defendant Reid, Mr. Reid may be entitled to a trial separate from that
4 defendant. See *Byrd v. Wainright*, 428 F.2d 1017 (5th Cir. 1970); *U.S. v.*
5 *Rosa*, 560 F.2d 149 (3rd Cir. 1977); *U.S. v. Rogers*, 925 F.2d 1285 (10th Cir.
6 1991).

7
8 The exculpatory nature of the evidence can be testimony that Mr.
9 Reid was never present at various drug-related activities, that the testifying
10 individual never saw Mr. Reid engage in any illegal activity, and/or that he
11 never heard any other defendant claim that Mr. Reid was involved in the
12 activities that of the subject of the Indictment herein.
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15 Traditionally, the way to scrupulously safeguard both the right of a
16 defendant not to incriminate himself and the right of a co-defendant to have
17 access to the evidence, once a severance is granted, is to set the trial of
18 the testifying defendant first and the trial of the defendant for whom the
19 exculpatory testimony would be offered subsequent thereto. *U.S. v. Gay*,
20 567 F.2d 916 (9th Cir. 1978).
21

22 Counsel undersigned has discussed this issue with counsel of record
23 for all three remaining co-defendants. If the factual predicate to a
24
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1 severance can be established, appropriate evidence will be filed prior to or
2 at the hearing on this Motion.

3
4 RESPECTFULLY SUBMITTED this 29th day of January, 2009

5
6 LAW OFFICES OF
7 NASH & KIRCHNER, P.C.

8
9 BY /S/ Walter Nash
10 WALTER NASH
11 Attorney for Defendant Reid

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was delivered to opposing counsel and all other counsel of record *via* the CM/ECF system this 29th day of January, 2009.

/s/ Walter Nash
Walter Nash

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